

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION RECEIVED

CHRISTOPHER McCULLOUGH,
#174909
PETITIONER

VS
DANIEL JONES, WARDEN
RESPONDENT,

2007 MAR 12 A 9:42

* CASE NO. 3:07-CV-71-WHA
DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

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RESPONSE TO MAGISTRATE ORDER
COMES NOW THE PETITIONER
HIS ANSWER IN COMPLIANCE
TO SAID ORDER, HEREBY GIVES
LEGITIMATE REASONS FOR HIS
CONTINUATION OF PURSUING
HABEAS CORPUS REVIEW IN
FEDERAL COURT.
THE PETITIONER CONTENDS THAT
THE ISSUES ARE ADEQUATE ENOUGH
TO DESERVE ENCOURAGEMENT TO
PROCEED FURTHER.

PETITIONER STANDS TO CHALLENGE SUCH DEFAULT BECAUSE OF THE TRIAL COURT NEGLECTING TO AWARE PETITIONER OF SUCH DISMISSAL OF HIS POST-CONVICTION RULE 32 ON WHICH ANY FINAL JUDGEMENT BY TRIAL JUDGE SHOULD BE MADE BY WAY OF WRITTEN ORDER AND THE CIRCUIT CLERK SHALL ISSUE SAID ORDER TO ALL PARTIES INVOLVED IN THE CASE INCLUDING PETITIONER. FAILURE TO DISCLOSE SUCH VALUABLE INFORMATION IS AN DIRECT VIOLATION OF MY CONSTITUTIONAL RIGHTS UP UNDER THE 5TH & 14TH AMENDMENTS WHICH GUARANTEES ME DUE PROCESS OF LAW AND I CANNOT BE DEPRIVED OF SUCH RIGHT.

By FAILING TO AWARE PETITIONER OF SAID ORDER, CAUSED PETITIONER TO BE PREJUDICED BY NOT ALLOWING ME THE RIGHT TO AN DIRECT APPEAL OF THE TRIAL COURT'S DECISION TO THE COURT OF CRIMINAL APPEALS. I COULD HAVE DISPUTED ANY AND ALL ISSUES DISMISSED BY TRIAL COURT OF THE POST-CONVICTION RULE 32.

TRIAL COURT WAS REQUIRED TO SPECIFY REASON OR REASONS FOR ITS DISMISSAL AS TO EACH CLAIM RAISED IN PETITION FOR POST-CONVICTION RELIEF, WHETHER BASED ON PROCEDURE OR ON THE MERITS. RULES OF CRIMINAL PROCEDURE 32

HARPER V. STATE, 676 So. 2D 989 (ALA. CRIM. APP. 1998)

ACCORDINGLY, BECAUSE THE APPELLANT PRESENTED AN ALLEGATION THAT, IF TRUE, ENTITLES HIM TO RELIEF, THE TRIAL COURT ERRED IN SUMMARILY DISMISSING THIS CLAIM. EX PARTE BOATWRIGHT 471 So. 2d 1257 (ALA. 1985)

SEE ALSO EX PARTE DUNN, 514 So. 2d 1300 (ALA. 1989.)

I FURTHER CONTEND THAT THE STATE COURTS MADE UNREASONABLE DECISIONS DEALING WITH THIS CHARGE WHICH WAS CLEARLY DIVERGENT FROM THE EVIDENCE AND THE LAW AND AGAINST THE GREAT WEIGHT AND PREPONDERANCE OF THE EVIDENCE.

THE COURT OF CRIMINAL APPEALS MADE AN AFFIRMATION ON IMAGINATIVE MEASURES OF WHAT THEY PROCLAIMED OR WHAT THEY WOULD THINK OF WHAT COULD OF HAPPEN INSTEAD OF WHAT DID HAPPEN. THIS WAS VERY UNREASONABLE AND PREJUDICED PETITIONER OF HIS ACTUAL INNOCENCE OF SAID CHARGE.

THEY FURTHER PREJUDICED PETITIONER BY USING THE ACTIONS OF THE CO-DEFENDANT SHOWING ANXIETY TO COMMIT SUCH ACT AS TO THEY CONTEND THE NON-SIGNED STATEMENT THEY PREPARED FOR ME STATES THAT I DENIED FOR HIM TO DO SO AND PROCLAIMED THAT I FIRMLY STOP THIS FROM OCCURRING. ON WHICH THE STATE COURTS USED THIS STATEMENT AS AN PROPORTION NOT AS A WHOLE.

THE STATE COURTS ALSO PREJUDICED THE PETITIONER BY ALLOWING THE CO-DEFENDANT TO READ HIS STATEMENT AT TRIAL AFTER HE GAVE CONFLICTING AND CONTRADICTORY TESTIMONY. THEY LEAD THE WITNESS THROUGHOUT THIS TRIAL.

ANOTHER UNREASONABLE DECISION THE STATE COURTS MADE WAS THE DETERMINATION OF A WEAPON USED TO CORROBORATE THE CO-DEFENDANT THEY NEEDED A WITNESS TO CORROBORATE THIS THEY DID NOT DO. THIS IS WHAT CONSTITUTE THE SERIOUSNESS OF THIS CHARGE. I WAS ACCUSED OF HAVING THE GUN ON THIS OCCASSION AND ON SEVERAL OTHER OCCASSION BARE HANDED AND THE WEAPONS WAS SENT TO THE A.B.I. IN MONTGOMERY, ALABAMA ON WHICH THEY DID AN ANALYSIS AND ACKNOWLEDGE THAT NO FINGERPRINTS WERE NOT EFFECTED. THIS WAS NOT PRESENTED AT TRIAL ON WHICH PREJUDICED THE PETITIONER ON WHICH WAS ONE OF TWO QUESTIONS DELIVERED BY THE JURY.

I COULD NOT BE FOUND GUILTY OF POSSESSING A WEAPON BY THE CO-DEFENDANTS WORD ALONE BUT I WAS. WITHOUT THE WEAPON THIS CHARGE AUTOMATICALLY DROPS TO THIRD DEGREE. SO I CONTEND THAT NO REASONABLE JUROR WOULD HAVE CONVICTED ME OF THIS OFFENSE WHO CONTAINS THE PROPER KNOWLEDGE OF LAW CONTAINING THIS CHARGE.

THE RELIABLE EVIDENCE SHOWS THAT THERE WAS NO ATTEMPT TO COMMIT THE CRIME OF BURGLARY THAN MERE INTENT ON THE CO-DEFENDANT PART. REMOTE PREPARATORY ACTS REASONABLY IN A CHAIN OF CAUSATION DO NOT CONSTITUTE AN ATTEMPT. HUBBINS V. STATE 50.20 918 (1962.)

COURT HELD THAT MERE PRESENCE AT THE SCENE WAS INSUFFICIENT TO PROVE APPELLANT'S GUILT UNDER A THEORY OF COMPLICITY. JONES V. STATE, 481 S.O.2D 183 (ALA. CRIM. APP. 1985.)

I ALSO CONTEND THAT MY CONSTITUTIONAL RIGHT
 UPONDER THE 5TH AMENDMENT FOR
 SELF-INCRIMINATION HAS BEEN VIOLATED
 BY ME ACKNOWLEDGING THAT I WAS THERE
 TO BE A WITNESS THIS CRIME BUT STOP IT.
 THE ONLY WAY THEY PROCLAIMED THAT I WAS
 PRESENT ON THIS LAND WAS MY TESTIMONY.
 5TH AMENDMENT STATES THAT NO SHALL
 ANY PERSON BE COMPELLED IN ANY CRIMINAL
 CASE TO BE A WITNESS AGAINST HIMSELF.
 THIS TESTIMONY ACCUMULATES MY PRESENCE
 ON THIS DAY.

I ALSO CONTEND THAT I HAD INEFFECTIVE
 ASSISTANCE OF COUNSEL UPONDER THE
 6TH AMENDMENT ON WHICH KYLA HELINGROTT
 LOST THE TRIAL AND APPEAL AND DID NOT
 DISPUTE THE CORROBORATE EVIDENCE AT TRIAL.
 SHE DID NOT PRESERVE THE RIGHT FOR REON
 APPEAL BECAUSE THE COURT OF CRIMINAL APPEALS
 STATED THAT I DID NOT PRESERVE THE RIGHT
 FOR REVIEW ON APPEAL BECAUSE MRS. GROTT DID
 NOT DISPUTE THE CORROBORATE EVIDENCE
 UNTIL SHE FILED A MOTION FOR NEW TRIAL
 THIS SHOWS THAT HER STRATEGY AT TRIAL
 WAS WELL BELOW THE EXPECTATIONS OF THE LAW
 AND WAS VERY DEFICIENT.

AND IT IS MANDATORY FOR ME TO STATE THAT
 NO COMPETENT ATTORNEY WOULD MADE SUCH AN
 INCONSIDERATE DECISION.

THIS PREJUDICED PETITIONER FROM ATTACKING
 THE ISSUE OF CORROBORATING THE CO-DEFENDANT
 TESTIMONY ON DIRECT APPEAL.

THIS IS A MATERIAL DISTINGUISHABLE FACT.

RESPECTFULLY

Signature Christopher C. McCullough
Christopher C. McCullough
PRO SE

CERTIFICATE OF SERVICE

I HEREBY DO CERTIFY THAT ON THE 5TH DAY
OF MARCH, 2007, I HAVE SENT AN EXACT
SAME COPY OF THE FOREGOING TO TROY KIM
ATTORNEY GENERAL
ALABAMA STATE HOUSE
11 SOUTH UNION

MONTGOMERY, AL 36130-0152
BY PLACING THE SAME IN THE UNITED STATES
POSTAL SERVICE POSTAGE PAID BY PLACING
THE SAME IN THE MAIL IN AN
UNITED STATES POST OFFICE.

RESPECTFULLY,
Signature Christopher C. McCullough
Christopher C. McCullough
PRO SE

ADDRESS OF COUNSEL

Christopher McCullough #174909
R-#06 CELL W.E. DONALDSON
100 WARRIOR LANE BESSEMER, ALABAMA 35023

CHRISTOPHER MCELHUGH #174909 R-066666
U.S. DOUARDSON 10000 N. R. 2000 L. AVE
BESSERME, ALABAMA 35003

OFFICE OF THE CLERK

UNITED STATES DISTRICT COURT

P.O. BOX 711

Montgomery, ALABAMA 36104-0711

12-6-11 MHA

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